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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Competitive Telecommunications)
Association, Florida Competitive Carriers)
Association, and Southeastern Competitive)
Carriers Association)
) CC Docket No. 98-39
Petition On Defining Certain Incumbent)
LEC Affiliates As Successors, Assigns, or)
Comparable Carriers Under Section 251(h))
of the Communications Act)

BELL ATLANTIC REPLY COMMENTS

Several commenters urge the Commission to issue an even more outrageous ruling than the one requested by CompTel. NEXTLINK, WorldCom, ALTS and e.spire Communications want the Commission to impose Section 251(c) obligations on any affiliate of an incumbent local exchange carrier that offers local exchange services. The Commission has already rejected such requests because they are unlawful and contrary to sound public policy.

The Commission has repeatedly recognized the importance of being able to offer one-stop shopping to customers. In 1996, the Commission noted that "[a]s firms expand the scope of their existing operations to new product lines, they will increasingly offer consumers the ability to purchase local, intraLATA, and interLATA telecommunications services, as well as wireless, information, and other services, from a single provider (i.e., 'one stop shopping'), and other advantages of vertical integration." *Implementation of the*

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Non-Accounting Safeguards of Sections 271 and 272, 11 FCC Rcd 21905, ¶ 7 (1996) (“*Non-Accounting Safeguards Order*”). More recently, the Commission “agree[d] with commenters that it is desirable for carriers to provide integrated telecommunications service packages, and that the 1996 Act contemplates one-stop shopping, as past ‘product market’ distinctions between local and long distance blur. *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, 11 Comm. Reg. (P & F) 382, ¶ 64 (1998) (footnotes omitted) (“*CPNI Order*”).

But NEXTLINK and several other commenters want to limit the ability of Bell companies to use a single affiliate to provide both long distance and local service. To accomplish this objective, they ask the Commission to impose Section 251(c) obligations on any Bell company affiliate that offers local service. This proposal would create a Catch-22 situation for any Bell company affiliate that attempts to offer both local and long distance service.

Section 272 requires that a Bell company long distance affiliate be “separate from any operating company entity that is subject to the requirements of section 251(c).” 47 U.S.C. § 272(a)(1)(A). Under the ruling requested by NEXTLINK and others, a Bell company long distance affiliate that attempted to offer local service would acquire Section 251(c) obligations. It would no longer qualify as a separate affiliate entitled to offer long distance service under Section 272.

The Commission has already rejected such proposals. The Commission found that “a BOC affiliate should not be deemed an incumbent LEC subject to the requirements of section 251(c) solely because it offers local exchange services.” *Non-Accounting*

Safeguards Order ¶ 312. And the Commission correctly held that a Bell company affiliate is neither a “successor” or “assign” under Section 251(h)(1) nor a “comparable company” under Section 251(h)(2) “merely because it is engaged in local exchange activities.” *Id.*

The Commission further concluded that “section 272 does not prohibit a section 272 affiliate from providing local exchange services in addition to interLATA services, nor can such a prohibition be read into that section.” *Id.* The Commission also “conclude[d] as a matter of policy that regulations prohibiting BOC section 272 affiliates from offering local exchange service do not serve the public interest . . . [and] agree[d] with the BOCs that the increased flexibility resulting from the ability to provide both interLATA and local services from the same entity serves the public interest, because such flexibility will encourage section 272 affiliates to provide innovative new services.” *Id.* ¶ 315.

The Commission correctly determined that only a “transfer” of network elements from a Bell company to its section 272 affiliate triggers Section 251(c) obligations: “if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), we will deem such entity to be an ‘assign’ of the BOC under section 3(4) of the Act with respect to those network elements.” *Id.* ¶ 309.

Where a Bell company affiliate has no facilities of its own, it will likely resell the Bell company’s retail services or obtain unbundled network elements from the Bell company. In this case, the Bell company would still be subject to the requirements of Section 251(c) to make its retail services available for resale and to unbundled its

network. And the Bell company would continue to have non-discrimination obligations with respect to these resale and unbundling obligations that prevent it from favoring its affiliate.

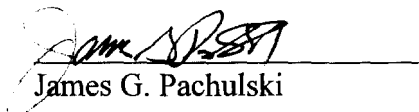
Where a Bell company affiliate constructs its own facilities, those facilities are not bottleneck facilities. Competing carriers can construct those same facilities and use them to compete with the Bell company affiliate. Unless the Bell company transfers network elements to its affiliate, there is no basis for imposing Section 251(c) obligations on the affiliate.

CONCLUSION

The Commission should reject the CompTel Petition.

Respectfully submitted,

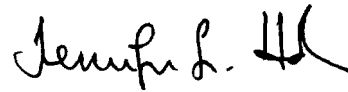
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 1998 a copy of the foregoing "Bell Atlantic Reply Comments" was sent by first class mail, postage prepaid, to the parties on the attached list.

A handwritten signature in cursive script, appearing to read "Jennifer L. Hoh", written over a horizontal line.

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